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CHARLES ELMORE

In the

Supreme Court of the United States

October Term, 1951

No. 149

LUTHER E. JOHNSON AND L. RAY TEMPLE,
Petitioners

v.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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July 26, 1951

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OPINIONS BELOW

The opinion of the District Court of the United States for the Eastern District of Virginia (R. 31-2) is unreported. The opinion of the Court of Appeals for the Fourth Circuit (R. 102-3) is reported in 188 F. (2d) 458.

JURISDICTION

The judgment of the Court of Appeals was entered on April 10, 1951 (R. 104). The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(1).

QUESTION PRESENTED

Whether petitioners alleged and proved facts necessary to sustain the jurisdiction of the District Court and to give such petititoners the requisite standing to maintain a suit as parties in interest under the provisions of 49 U.S.C.A. § 1(20), seeking an injunction restraining respondent, pursuant to authority granted by the State Corporation Commission of Virginia from abandoning the operation of a passenger ferryboat between Newport News and Norfolk and Portsmouth, Virginia, without having first obtained authority from the Interstate Commerce Commission under the provisions of 49 U.S.C.A. § 1(18), where respondent has continued to operate freight ferryboats and to provide passenger service by motorbus between said points.

STATUTE INVOLVED

The pertinent statutory provisions involved are set forth in the Petition at pp. 11-13.

STATEMENT OF THE CASE

In the United States District Court for the Eastern District of Virginia, the petitioners herein sued for an injunction under Section 1(20) of the Interstate Commerce Act, restraining this respondent from suspending, pursuant to authority granted by the State Corporation Commission of Virginia, the operation of a passenger ferryboat between its rail terminus at Newport News, Virginia, on the one hand, and its termini at Norfolk and Portsmouth, Virginia, on the other hand, without first obtaining a certificate of public convenience and necessity from the Interstate Commerce Commission authorizing the abandonment of a line of railroad, or the operation thereof, under the provisions of Section 1(18) of the Interstate Commerce Act. 49 U.S.-

CA. §§ 1(18), 1(20). Respondent denied that the suspension of the operation of passenger ferryboats between said points resulted in the abandonment of all or any portion of its line of railroad, or the operation thereof, within the purview of Section 1(18) of the Interstate Commerce Act, and further averred that respondent would continue to operate freight ferryboats and to provide passenger service by motorbus between said points.

In the pleading captioned Motion for Preliminary Injunction, later changed to Complaint filed June 1, 1950, commencing this litigation, paragraphs 7 and 8 thereof (R. 3-4) comprised the only allegations relating to the petitioners' interest or standing to maintain this suit.

It was there alleged that Luther E. Johnson, an employee of some three years' service and a member of the crew of the Steamer "Virginia" used in the passenger ferryboat service, had acquired seniority rights and retirement benefits while so employed and that if the service by passenger ferryboats were to be discontinued he would be deprived of his job as a member of the crew of the Steamer "Virginia" and thereby suffer damage in excess of Three Thousand Dollars. L. Ray Temple, a resident of Virginia, and an alleged user of the railway facilities, merely represented that he would be irreparably harmed if the passenger ferryboat were discontinued and passenger service provided by motorbus.

Respondent's answer, paragraph 7 (R. 11-12) denied that petitioner, Luther E. Johnson, had acquired valuable seniority and retirement rights; that this petitioner would be deprived of any lawful rights, and that respondent proposed to abandon all or any portion of its line of railroad. Respondent further answered that this petitioner would retain all seniority and retirement rights he then possessed and would be employed as a marine engineer on respondent's Newport News and Norfolk Terminal Division to such an

extent as his seniority rights in relation to other marine engineers on that division would permit. Respondent's answer alleged that it had no knowledge of the residence of petitioner, L. Ray Temple, or his alleged use of respondent's railroad facilities and called for strict proof of such allegation. Respondent also denied that the operation of transfer service by motorbus in lieu of a passenger ferryboat would result in irreparable harm to this petitioner or deprive him of any rights which he lawfully possessed.

Although the complaint alleged that petitioner, Luther E. Johnson, would be deprived of valuable earnings and rights, and that petitioner, L. Ray Temple, would be irreparably harmed and deprived of beneficial transportation facilities, nevertheless, respondent denied each and every allegation. Neither petitioner, Luther E. Johnson, nor petititoner, L. Ray Temple, testified at the trial of this action or attempted to supply the jurisdictional facts required for the maintenance of this action. Hence, petitioners' unsupported allegations, which were denied by respondent, present the only matters before the Court upon which it can be claimed that such petitioners are parties in interest within the meaning of the statute.

The District Court heard petitioners' Motion for Preliminary Injunction on the pleadings as submitted and concluded that neither in fact nor in law had there been an adandonment of a line of railroad. On final hearing, after hearing testimony and argument in open court, the District Court denied the injunction and ordered that the action be dismissed.

Petitioners appealed the decision of the District Court to the Court of Appeals for the Fourth Circuit. The Court of Appeals, after briefs had been submitted by both parties and a hearing had on the merits, vacated the judgment of the District Court and directed that the case be remanded to the

District Court with directions to that Court to dismiss the complaint because the petitioners were not parties in interest with proper standing to maintain the action. *Johnson, et al.* v. *Chesapeake & O. Ry. Co.*, 188 F. (2d) 458.

Petitioners repeatedly assert, pages 5, 7 and 10, that the Court of Appeals held that a District Court has no jurisdiction of any complaint of any individual for an injunction restraining a carrier from unlawfully abandoning a portion of its line of railroad, that no individual citizen can be a party in interest within the scope of Section 1(20) of the Interstate Commerce Act, and that the effect of the Court of Appeals' decision is to deprive every individual from having his day in court. As a preface to respondent's argument to follow, it is to be noted that the precise language of the Court's decision is that (petitioners) "Neither alleged or proved any such interest in the continuance of the ferry service as would give them standing in court to maintain a suit of this character."

ARGUMENT

A. Petitioners' Only Basis for Jurisdiction is as Parties in Interest Under Section 1(20) of the Interstate Commerce Act.

Petitioners instituted this proceeding in an effort to secure a preliminary and permanent injunction restraining respondent from an alleged abandonment of a line of railroad without having first obtained a certificate of public convenience and necessity from the Interstate Commerce Commission. Specifically, petitioners sought to enjoin the discontinuance by respondent of the operation of a passenger ferryboat between points within the State of Virginia between which respondent operated both passenger and freight ferryboats via the same route and in the same channel. Respondent has

continued the operation of freight ferryboats, but, pursuant to authority granted by the State Corporation Commission of Virginia, respondent has discontinued only the operation of the passenger ferryboat and is now providing passenger service between such points by motorbus. Petitioners alleged that the above action violated the provisions of Section 1(18) of the Interstate Commerce Act and that petitioners were entitled to an injunction under the provisions of Section 1(20) of that Act. By its express terms, Section 1(20) authorizes an injunction against an abandonment contrary to the provisions of Section 1(18) at the suit of the United States, the Interstate Commerce Commission, any commission or regulatory body of the State affected, or any party in interest. Since petitioners neither constitute nor represent any of the governmental bodies named by the statute, their only right to maintain a suit for an injunction under Section 1(20) necessarily must rest upon allegation and proof that petitioners are parties in interest within the intendment of that statute.

In addition to the specific allegations relating to Sections 1(18) and 1(20) of the Interstate Commerce Act, petitioners attempted to invoke the jurisdiction of the District Court under the general provisions of 28 U.S.C.A. §1331 and 28 U.S.C.A. §1337. However, it seems patent that these general statutory provisions relating to jurisdiction of the district courts of civil actions arising either under the constitution, laws or treaties of the United States or any Act of Congress regulating commerce, neither supplement nor supersede the specific provisions of the Interstate Commerce Act. This point is clearly demonstrated by decisions of this court dealing with the scope, intent and purpose of the Transportation Act of 1920 in which Congress added Sections 1(18)-(22), inclusive, to the statute law of the country. *Texas & Pac. Ry.* v. *Gulf, etc., Ry.*, 270 U. S. 266; *Western*

Pacific v. *South. Pac. Co.,* 284 U. S. 47. In analyzing the *Texas & Pacific* case, the court stated in the Western Pacific case, at page 51:

> "The Texas & Pacific Ry. sought to prevent an unauthorized competitor from building an extension into territory already served by it. Prior to the statute, it could not have maintained such a suit, since the competitor's proposed action did not threaten interference with any legal right. No carrier could then demand exemption from honest competition."

In the absence of the statutory provisions of Sections 1(18) and 1(20), a suit could not have been maintained to enjoin either the construction or abandonment of a line of railroad on the ground that a prior certificate had not been obtained from the Interstate Commerce Commission. It necessarily follows that extraordinary relief by injunction could not be granted where either construction or abandonment of a line of railroad did not result in any interference with definite legal rights. The earlier decision of this court in *Lucking* v. *Detroit Nav. Co.,* 265 U. S. 346, referred to by petitioners, is not in conflict. There, the suit was not to enjoin an abandonment of a line of railroad contrary to the provisions of Section 1(18) of the Interstate Commerce Act. General statutory provisions, such as 28 U.S.C.A. § 1331, and 28 U.S.C.A. § 1337, admittedly confer jurisdiction upon the district courts over a great mass of matters involving federal regulation. Such provisions, however, do not confer jurisdiction independently over matters where federal rights, duties, or obligations are created and the standing necessary to enforce such rights, duties or obligations is clearly delineated in the same statute. Thus, the question of jurisdiction rests solely upon a determination of whether petitioners have shown that they are parties in interest within the meaning of Section 1(20) of the Interstate Commerce Act.

B. Petitioners Did Not Testify at the Trial and Did Not Prove Essential Jurisdictional Facts.

In order to maintain this action, it was incumbent upon petitioners to allege and prove the facts necessary to sustain the jurisdiction of the district court. This court has held that "If * * * allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof." *McNutt* v. *General Motors &c. Corp.*, 298 U. S. 178, 189. See also *KVOS, Inc.* v. *Associated Press*, 299 U. S. 269, 280. Moreover, in *KVOS, Inc.* v. *Associated Press, supra*, the Court in discussing the problem of an appropriate method of challenging the jurisdictional allegation stated that "This could have been done by answer * * *." (p. 278). The instant petition merely begs the real question before the court because petitioners have neither alleged nor proved basic facts which are jurisdictional to the maintenance of this suit. The absence of necessary allegations and proof cannot be supplied by assumption, conjecture, or guesswork. An examination into the true nature of this matter clearly reveals the correctness of the decision sought to be reversed.

The complaint in this case alleged that petitioner, Luther E. Johnson, was an employe of respondent, had acquired valuable seniority rights and retirement benefits, and believed and was informed that if defendant abandoned its line of railroad he would be deprived of his job and thereby suffer a loss of earnings and other rights. Respondent's verified answer denied that this petitioner had acquired valuable seniority and retirement rights, denied that this petitioner would be deprived of any lawful rights, and further averred that this petitioner would retain any seniority and retirement rights he may possess and would continue to be employed as a marine engineer on respondent's Newport News and Nor-

folk Terminal Division to such an extent as his seniority rights in relation to other marine engineers would permit. It is significant that petitioner, Luther E. Johnson, did not appear and present evidence, nor did any other witness, relating to his alleged seniority and retirement rights or any threatened interference with such rights, although the trial was held over three months after respondent discontinued the passenger ferryboat. The reason for this somewhat unusual situation is clearly shown by the record. Although respondent discontinued the operation of a passenger ferryboat between Newport News and Norfolk and Portsmouth, Virginia, it has not discontinued the operation of freight ferryboats between those points. Thus, this petitioner's circumstance is comparable to that of an employee on a passenger train which, pursuant to state authority, is discontinued and freight trains are continued in operation on the same line of railroad. The failure of petitioner, Luther E. Johnson, to present evidence is undoubtedly accounted for by the fact that he has retained all seniority or retirement rights, as averred in respondent's answer, to employment as a marine engineer on the freight ferryboats which respondent has continued to operate between Newport News and Norfolk and Portsmouth, Virginia. Thus, the Court of Appeals held correctly that this petitioner had neither alleged nor proved the interference by respondent with any legal rights which would entitle him, as a party in interest, to maintain a suit under Section 1(20) of the Interstate Commerce Act.

The complaint in this case also alleged that petitioner, L. Ray Temple, was a user of respondent's facilities and that he would be irreparably harmed by the abandonment of a portion of respondent's line of railroad if, after such abandonment, respondent should substitute therefor bus transportion from its rail terminus at Newport News to its termini at Norfolk and Portsmouth. Respondent's answer

averred that it had no knowledge of this petitioner's use of its facilities, called for strict proof of such allegations, and denied that this petitioner would be irreparably harmed by the operation of transfer service by motorbus rather than by passenger ferryboat. Petitioner, L. Ray Temple, also failed to appear at the trial and present evidence supporting the allegations made in his behalf. It necessarily follows that the Court of Appeals held correctly that this petitioner had neither alleged nor proved either the possession of, or the interference by respondent with, any legal rights. Thus, the bare allegations of the complaint, which are not supported by any evidence of record, and which are categorically denied by respondent's answer, do not show the slightest semblance of the interest or standing required to maintain a suit for an injunction under Section 1(20) of the Interstate Commerce Act.

C. The Court of Appeals' Judgment is Sustained by a Consistent Line of Decisions of this Court.

This Court has frequently expressed the broad concepts of national transportation policy and the overriding concern of the public welfare added to the Interstate Commerce Act by the Transportation Act of 1920. The requirement that certificates be obtained from the Interstate Commerce Commission authorizing either the construction or the abandonment is predicated solely upon the interest of the public as a whole as measured by the test of public convenience and necessity. *Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295; *Texas & Pac. Ry.* v. *Gulf, etc., Ry., supra; Western Pacific* v. *South. Pac. Co., supra; R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331, and *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563. While the statute created positive duties and obligations, nevertheless the capacity to en-

force such duties and obligations was delegated, first, to the United States, second, to the Interstate Commerce Commission, third, to affected state commissions, and, fourth, to any party in interest. Here, neither the United States nor the Interstate Commerce Commission has brought the suit. Respondent filed an application with the Interstate Commerce Commission for a certificate under Section 1(18), which application was dismissed by that Commission. The state commission is not a party to the suit. In fact, the State Corporation Commission of Virginia has authorized respondent to discontinue the passenger ferryboat operation and, in lieu thereof, to provide passenger service by motorbus. The agency designated by law to represent the people of Virginia has approved and authorized the action by respondent which is the subject of petitioners' complaint. Thus, only two individuals, who apparently did not have sufficient interest to appear and present evidence at the trial, are here claimed to be parties in interest in a matter which in both fact and law is one of public interest.

In *Western Pacific* v. *South. Pac. Co., supra,* this court considered the meaning of the term "party in interest" as used in the statute and the standing necessary to support the maintenance of a suit involving the broad considerations of public policy set out in the Transportation Act of 1920. In the course of its opinion, the court stated, on pages 51 and 52:

> "If, as the court below seems to have assumed, a 'party in interest' must possess some clear legal right for which it might ask protection under the rules commonly accepted by courts of equity, the paragraphs under consideration would not materially aid the Congressional plan for promoting transportation. On the other hand, there was no purpose to permit any individual so inclined to institute such a proceeding. The

> complainant must possess something more than a common concern for obedience to law. See *Massachusetts* v. *Mellon*, 262 U. S. 447, 488. It will suffice, we think, if the bill discloses that some definite legal right possessed by complainant is seriously threatened or that the unauthorized and therefore unlawful action of the defendant carrier may directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation. Here, the petitioner was peculiarly concerned; its own welfare was seriously threatened. It alleged the beginning of the unlawful undertaking by a carrier which might prove deleterious to it as well as to the public interest in securing and maintaining proper railroad service without undue loss. It relied upon the procedure prescribed by the statute to secure an orderly hearing and a proper determination of the matter."

The expression of the Court in the above decision must be considered in the light of the fact that petitioner, a competing railroad, had filed an application with the Commission for authority to construct a line of railroad to serve the area. It alleged not only that respondent's action might prove deleterious to it, but also that such action would be harmful to the public interest in securing adequate transportation facilities without undue loss. It is apropos here that petitioners have neither alleged nor attempted to prove any element of public interest in connection with the instant complaint. As a matter of fact, petitioners, who did not even testify at the trial, have made no effort to demonstrate as much as a common concern for obedience to the law.

A particularly significant decision of this Court is that cited by the Court of Appeals. *Singer & Sons* v. *Union Pacific R. Co., supra.* The question before the Court in that case dealt with the right of certain shippers located at Kansas City, Missouri, as well as the City of Kansas City,

Missouri, to maintain a suit under Section 1(20) of the Interstate Commerce Act to enjoin a railroad from constructing certain trackage in Kansas City, Kansas, which would serve other shippers. In holding that such shippers were not parties in interest, the Court stated on pages 303-4:

> "The Transportation Act, 1920, was designed to protect the public against action which might endanger its interest. In order to aid that general purpose, Paragraph 20, § 402, provides that suit for an injunction may be instituted by the United States, the Commission (I.C.C.), any Commission or Regulative Body of the state or states affected, or any 'party in interest.' Such a suit cannot be instituted by an individual unless he 'possesses something more than a common concern for obedience to law.' The general or common interest finds protection in the permission to sue granted to public authorities. An individual may have some special and peculiar interest which may be directly and materially affected by alleged unlawful action. See *Detroit & M. R. Co.* v. *Boyne City, G. & A. R. Co.*, 286 F. 540. If such circumstances are shown he may sue; he is then 'party in interest' within the meaning of the statute. In the absence of these circumstances he is not such a party.
>
> "We cannot think Congress supposed that the development and maintenance of an adequate railway system would be aided by permitting any person engaged in business within or adjacent to a public market to demand an injunction against a carrier seeking only to serve a competing market by means of an extension not authorized by the Interstate Commerce Commission."

The leading decisions of this court clearly indicate that although competing railroads may be interested parties under the broad considerations of policy established by the

Transportation Act of 1920 governing the maintenance of an adequate railroad system, nevertheless competing shippers, who also may be affected by changes in competitive and economic situations resulting from extensions of lines of railroads without commission authority, are not parties in interest under the Act. Thus, it necessarily follows that the instant petitioners, who did not testify at the trial and who did not even attempt to prove any loss, injury, or change in the transportation situation materially affecting either such petitioners or the general public, have not shown a proper standing to litigate this matter. Essentially, the action involves a public controversy. The record is completely devoid of the elementary jurisdictional facts.

In connection with the question presented, the language of Mr. Justice Frankfurter's separate opinion in *Singer & Sons* v. *Union Pacific R. Co., supra,* illustrates the extent and importance of the public interest in cases of this character. This opinion, which was joined in by four justices who also concurred in the court's opinion, states at pages 306-8:

> "Who then is a 'party in interest'? As a part of the very system through which the national policy is to be achieved, a railroad has been deemed by this Court a 'party in interest' to effectuate the railroad policy introduced by the licensing system of the Transportation Act. *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.,* 270 U. S. 266, 277; *Western Pacific R. Co.* v. *Southern Pacific Co.,* 284 U. S. 47. And one who in a proceeding initiated before the Interstate Commerce Commission has been treated by it as a party to the litigation, cf. Los Angeles Passenger Terminal Cases, 100 I.C.C. 421; 142 I.C.C. 489; *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission,* 283 U. S. 380, 393-94, may perhaps be deemed a 'party in interest' in the further pursuit of claims before a court after adverse action by the Commission. Compare *Interstate Com-*

merce Comm'n v. *Oregon-Washington R. Co.*, 288 U. S. 14, and *Federal Communication Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470. But to allow any private interest to thresh out the complicated questions that arise out of § 1(18-22)—as, for instance, whether a proposed construction is an 'extension' or a 'spur', compare *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266—is to invite dislocation of the scheme which Congress has devised for the expert conduct of the litigation of such issues. It also would put upon the district courts the task of drawing fine lines in determining when a private claim is so special that it may be set apart from the general public interest and give the claimant power to litigate a public controversy. These inquiries are so harassing and unprofitable as to be avoided, unless Congress has explicitly cast the duty upon the courts. Against any such implication, in the absence of rather plain language, the whole course of federal railroad legislation and the relation of the Interstate Commerce Commission to it admonishes. The interests of merely private concerns are amply protected even though they must be channelled through the Attorney General or the Interstate Commerce Commission or a state Commission."

The decision of the District Court in *Detroit & M. Ry. Co.* v. *Boyne City, G. & A. R. Co.*, 286 F. 540, cited in the Court's decision above is referred to by petitioners as grounds for granting the writ. This lower court's decision was predicated upon definite allegations and proof by a competing railroad that the transportation situation would be materially changed and by a property owner that his property would be taken as the result of the projected construction of a line of railroad without authorization by the Interstate Commerce Commission. Thus, this decision, on its face, is not in conflict with the opinion of the Court of Appeals. The complete failure on the part of petitioners in this case to

either allege or prove the essential elements of legal interest or injury supplies a basic reason for the difference between the results of the two decisions. Petitioners also refer to the decision in *Farmers Grain Co.* v. *Toledo, P. & W. R. R.*, 158 F. (2d) 109 (C.C.A.-7, 1946) as only apparently in conflict with the decision of the Court of Appeals in the instant case. That decision arose out of a suit by certain shippers to secure appointment of a receiver to operate a strikebound railroad. It was not filed under Section 1(20) of the Interstate Commerce Act; did not involve an alleged abandonment contrary to Section 1(18) of that Act, and thus did not discuss or mention any question relating to whether plaintiffs had proper standing to maintain a suit under Section 1(20) of that Act. The decision is, therefore, irrelevant and is not in conflict with the decision here sought to be reviewed. By no stretch of the imagination does that decision establish any principle which could excuse petitioners' failure to allege and prove requisite jurisdictional facts.

There have been several decisions dealing with the standings of parties to maintain suits to set aside, enjoin and annul decisions or orders of the Interstate Commerce Commission issued pursuant to Sections 1(18)-(22), inclusive, and other provisions of the Interstate Commerce Act. In connection with such suits, it is significant to note that neither Section 17(9) of the Interstate Commerce Act nor the provisions of 28 U.S.C.A., §§2321-2325, inclusive, define the standing of a party which may maintain suits. However, the decisions of this court indicate that such suits may be maintained only by parties in interest who have independent legal rights which may be violated. In *Pittsburgh & W. Va. Ry.* v. *U. S.*, 281 U. S. 479, plaintiff, a minority stockholder in a railroad company, sought to set aside an order issued by the Commission granting the railroad company certificates of public convenience and necessity authorizing the abandon-

ment of station facilities and the use of facilities in a union terminal. The court held that plaintiff's stock interest did not give it standing independently to institute suit to annul the Commission's order. In *Moffat Tunnel League* v. *U. S.*, 289 U. S. 113, the Supreme Court held that the Moffat Tunnel League and the Vintah Basin Railroad League could not maintain a suit to set aside an order of the Commission authorizing one railroad to acquire control of another railroad on the grounds that such leagues were not public bodies, had no capacity to sue, and could demonstrate no legal right or interest affected by the order. See also *Home Furn. Co.* v. *United States*, 271 U. S. 456; *Boston Tow Boat Co.* v. *U. S.*, 321 U. S. 632. This Court has also held that shippers may not maintain, independently, suits to annul and set aside orders of the Commission under the rate provisions of the Interstate Commerce Act, unless such shippers submit proof of legal injury as a direct result of the order assailed. *Edward Hines Trustees* v. *U. S.*, 263 U. S. 143, 148; *Sprunt & Son* v. *United States*, 281 U. S. 249, 254.

The decisions of this Court spell out definite standards to be applied in considering whether or not petitioners have proper standing to maintain this suit for an injunction under Section 1(20) of the Interstate Commerce Act. Petitioners have specifically alleged only that an injunction should be granted restraining an alleged violation of Section 1(18) of that Act. When the situation here presented is measured by the consistent decisions of this Court, it is conclusively demonstrated that petitioners have not shown that they are parties in interest, entitled to maintain a suit of this character. Moreover, as we have seen, neither the decisions of this Court, nor the decisions of the lower Federal Courts are in conflict with the judgment of the Court of Appeals in this case. Rather, that judgment is compelled by a consistent line of decisions.

The Court of Appeals did not, as petitioners assert, hold that an individual, or two individuals, could not be a party, or parties, in interest within the scope of Section 1(20) of the Interstate Commerce Act. The Court of Appeals merely held that the petitioners here have neither alleged nor proved any interest in the continuance of respondent's previously operated passenger ferryboat service sufficient to give them standing in court to maintain a suit of this character. The foregoing analysis of petitioners' deficient allegations and the lack of any evidence of a cognizable legal injury or a special interest of a public nature supports irresistibly the judgment of the Court of Appeals.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals is clearly correct and the Petition for a Writ of Certiorari should be denied.

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